PAUL S. COUPEY

IBLA 81-1015 Decided May 24, 1982

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, canceling oil and gas lease NM 32689.

Affirmed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

APPEARANCES: Paul S. Coupey, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Paul S. Coupey appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 24, 1981, canceling oil and gas lease NM 32689. The lands at issue in this lease occupy approximately 640 acres in protracted secs. 7 and 8, T. 26 N., R. 2 E., New Mexico principal meridian.

Oil and gas lease NM 32689 was issued to appellant with an effective date of December 1, 1980, pursuant to appellant's over-the-counter offer of January 23, 1980. By its April 24 decision, BLM canceled this lease because it found that the lands were unavailable for leasing under 43 CFR 3111 at the time of appellant's offer. The decision noted that the lands described in appellant's lease had been included in a prior lease, NM 23170, which terminated on August 2, 1976.

Regulation 43 CFR 3112.1-1 states in pertinent part:

> All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart.

The applicable subpart, 3112, describes the procedures for BLM's drawing of simultaneous oil and gas lease applications. Appellant's over-the-counter offer was tendered pursuant to subpart 3111.

In his statement of reasons on appeal, appellant states that he has done extensive aerial photography of the lands with interpretations and has negotiated and committed himself to a remunerative farmout agreement to develop the lands. No other lease has ever been issued on this land, appellant argues, according to the plat record in BLM's Santa Fe Office.

[1] While it is regrettable that appellant may be disadvantaged by cancellation of lease NM 32689, BLM's decision of April 24 must be affirmed. It is clear that the Secretary of the Interior generally has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Husky Oil Co., 52 IBLA 41 (1981). Prior to acceptance of any over-the-counter offers for the lands described in appellant's offer, BLM was required by 43 CFR 3112.1-1 to post these lands to its list of lands available for simultaneous oil and gas lease applications. In the absence of such posting, the lands were not available for leasing, and any lease issued was void as to such lands. Husky Oil Co., supra at 42. A lease that has issued for lands in an over-the-counter offer may be canceled where such lands were included in a previous lease, since terminated, and the lands have not been posted in accordance with 43 CFR 3112. Claude C. Kennedy, 12 IBLA 183 (1973). BLM should have rejected appellant's over-the-counter offer. James W. Phillips, 61 IBLA 294 (1982). In the event a lease has been issued on the basis of an application or offer which should have been rejected, BLM is directed by 43 CFR 3112.6-3 to take action to cancel the lease unless the rights of a bona fide purchaser have intervened. Appellant does not allege the existence of a bona fide purchaser.

The historical index of partially surveyed township T. 26 N., R. 2 E., New Mexico principal meridian, incorrectly shows that oil and gas lease NM 23170 did not include lands in protracted secs. 7 and 8. The serial register page for this lease, however, shows that all of protracted secs. 7 and 8 were included in the lease. BLM, therefore, was correct in canceling appellant's lease for the reason stated in its April 24 decision. Reliance upon erroneous notations to a historical index cannot create any rights not authorized by law. See Alver C. Duncan, 39 IBLA 144 (1979); Hudson Investment Co., 17 IBLA 146, 81 I.D.. 533 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge